

STATE OF UTAH

OFFICE OF THE ATTORNEY GENERAL



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SECRETARY, BOARD OF
OIL, GAS & MINING

JOHN E. SWALLOW
Chief Deputy

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KIRK TORGENSEN
Chief Deputy

April 2, 2010

Counsel of Record
Docket No. 2009-119
Cause No. C/025/0005

*Re: Board Member Financial Interests
Docket No. 2009-019; Cause No. C/025/0005*

Dear Counsel:

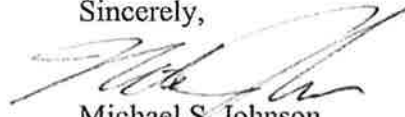
At the March 24, 2010 Board hearing, each Board member made statements on the record outlining their past or present connections to the coal industry. Board member Jean Semborski stated specific facts pertaining to her former employment by a coal operator and her husband's current employment by a coal operator. Later, she was asked a question regarding whether she had any direct or indirect financial interest in a Utah coal mining operation. Although the state coal rules address employment as part of the "financial interest" analysis, Ms. Semborski understood the question asked to pertain to stock ownership rather than to her husband's employment (which she had already addressed). She therefore answered the question in the negative. As Ms. Semborski had previously stated on the record, however, while she no longer works in the coal industry, her husband is employed by a coal operator (which operates mines both in Utah and Wyoming). She asked that I provide this clarification to the parties.

Ms. Semborski's example illustrates an issue the Board cautions the parties to keep in mind. The intent of the Board members in making their statements at the hearing was to communicate facts related to their individual circumstances with respect to the coal industry. The Board members were not certifying or offering an analysis of how those facts relate to any particular definitions or provisions of any statutes or rules. The briefs filed by the parties concerning Board member financial interests evidence disagreement about which definitions and provisions of the statutes and rules control a Board member's duty to recuse. How the facts described by Board members fit within the definitions or other provisions of the statutes and rules that any party may view as material to the recusal duty is not something the Board members (or the Board itself) attempted to analyze at the hearing. While the Board has a duty to analyze on its own any potential conflicts of interest, the purpose of the Board members' statements at the hearing was to apprise the parties of the facts surrounding their coal industry

connections so that the parties would have an opportunity to analyze for themselves whether they viewed any of the facts described as problematic and bring any related concerns to the Board's attention as they deem appropriate.

In the interest of ensuring that all issues concerning Board member participation have been resolved, I note that on December 9, 2009, I circulated to all counsel copies of the document attached to this letter which sets forth facts concerning Board member Kelly Payne's prior contacts with one of the potential witnesses in this case. I circulated copies of this document prior to the start of the December 9, 2009 hearing so the parties could consider whether they had any objection to Mr. Payne's participation in the case. Mr. Payne also briefly addressed the issue on the record. The Board has heard nothing from any of the parties concerning this issue since December 9, 2009 (including at motion hearings held since that date at which Mr. Payne was in attendance) and therefore assumes that no party objects to Mr. Payne's participation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Johnson", written over a horizontal line.

Michael S. Johnson
Assistant Attorney General
Counsel to the Board of Oil, Gas & Mining

Kelly Payne stated the following concerning his prior contacts with one of the people who did work on the Alton permit application:

"I am aware that a former work colleague, Erik Petersen, has been involved in the preparation of the Alton permit application, specifically the hydrology portion that seems to be one of the cruxes of the appeal.

>Erik and I were employed by Mayo and Associates, Lindon, Utah, and worked together on coal permit applications and PHC updates for new and existing Utah mines. I left Mayo and Associates in June 2000.

>While I was employed by Norwest Corporation, Salt Lake City, from 2000 to 2004, I engaged Erik as a sub-contractor to conduct a hydrologic monitoring program for an oil-shale development in Colorado.

>Since joining Kennecott in 2004, I have engaged Erik as a contractor for short duration tasks, and have paid Erik less than \$1000/year for the last three years.

>In 2005, Erik asked me to assist him with the specification, programming, and installation of a meteorological monitoring station at Alton. I provided less than 20 hours of assistance and neither expected nor received compensation.

>I have had no discussion of the Alton permit application with Erik and am confident that there has been no ex parte communication regarding the matter."

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing letter concerning Docket No. 2009-019, Cause No. C/025/0005 to be mailed with postage prepaid, this 2nd day of April, 2010, to the following:

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A handwritten signature in black ink, appearing to be "M. H. Bloch", written over a horizontal line.